



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2012-OS-0048]

**U.S. Court of Appeals for the Armed Forces Proposed Rules
Changes**

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 19(b) and 22(b) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces.

DATES: Comments on the proposed change must be received within 30 days of the publication date of this notice.

ADDRESSES: You may submit comments, identified by docket number and title by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria VA, 22350-3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other

submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone 202-761-1448.

Dated: April 12, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Rules 19(b)

The first sentences of Rules 19(b)(1), (2), and (3)
currently read:

(b) Certificate for review/brief/answer/reply.

(1) Article 62, UCMJ, cases. In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no

later than 30 days after the date of the decision of the Court of Criminal Appeals.

(2) Extraordinary relief cases. In cases involving a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(3) Other cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals (see Rules 22 and 34(a)), or (b) no later than 30 days after a petition for grant of review is granted.

The proposed changes to the first sentences of Rule 19(b) (1), (2) and (3) would read:

(1) Article 62, UCMJ, cases. In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(2) Extraordinary relief cases. In cases involving a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(3) Other cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed either (a) no later than 60 days after the date of the decision of the Court of Criminal Appeals (see Rules 22 and

34(a)), or (b) no later than 30 days after a petition for grant of review is granted.

Rule 22(b)

The first sentences of Rule 22(b)(1), (2), and (3)
currently read:

(b)(1) Article 62, UCMJ, cases. A certificate for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862, shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(2) Extraordinary relief cases. A certificate for review of a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant, no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(3) Other cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals (see Rule 34(a)) or (b) no later than 30 days after a petition for grant of review is granted.

The proposed changes to the first sentences of Rule 22(b)(1), (2), and (3) would read:

(b)(1) Article 62, UCMJ, cases. A certificate for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862, shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant, no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(2) Extraordinary relief cases. A certificate for review of a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant, no later than 60 days

after the date of the decision of the Court of Criminal Appeals.

(3) Other cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review shall be filed either (a) no later than 60 days after the date of the decision of the Court of Criminal Appeals (see Rule 34(a)) or (b) no later than 30 days after a petition for grant of review is granted.

Comment: Rules 19(b) and 22(b) currently allow 30 days for the filing of certificates for review by the Judge Advocate General, although a service member is given 60 days to file a petition for grant of review. Extension requests are filed in nearly all of the cases in which a certificate is to be filed, and the Rules Advisory Committee has determined that the 30 days allowed by this rule is insufficient time to obtain the necessary approvals and to file the certificate.

This change to 60 days will not apply in those cases where the Court grants a petition for grant of review, and the government wishes to request the Judge Advocate General to file a certificate for review. In that event, the Judge Advocate General will continue to have 30 days from the

date the petition is granted to file the certificate for review. The 30-day deadline in these cases should not be extended because it will slow the processing of the case by the Court, and it will be less onerous because the case is already before the Court, making it easier for the services to determine whether they wish to bring additional issues before the Court in those cases.

The proposed change contained in the Federal Register Notice of January 23, 2012, omitted the words "(see Rules 22 and 34(a))" from the change to Rule 19(b). The error is corrected in this notice. Also, the January 23, 2012, Notice did not include proposed changes to Rule 22(b), which contains the same filing deadlines for certificates for review that were in Rule 19(b). This notice provides the necessary proposed change to Rule 22(b) as well.

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